

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

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**FILE:** B-208701

**DATE:** January 31, 1983

**MATTER OF:** Visar Company, Inc.

**DIGEST:**

1. Government did not frustrate carrier's ability to deliver bid package where commercial carrier that contracted with protester to deliver bid to office designated in the solicitation instead asked an agency employee--who was not affiliated with the contracting activity--to deliver an unmarked package containing protester's bid.
2. Where carrier for its own convenience gives an unmarked package containing protester's bid to an agency employee rather than delivering it to the proper office, subsequent misrouting of bid by another agency employee was not the paramount reason for the late arrival of the bid at the contracting office and bid was properly rejected.

Visar Company, Inc. protests the refusal of the Department of the Army, Corps of Engineers to consider its bid under invitation for bids (IFB) No. DACW57-82-B-0094. Visar contends that its bid was received after the time set for bid opening because a Corps employee frustrated its carrier's ability to deliver the bid. Alternatively, Visar contends that the Corps mishandled the bid after its timely receipt at the Government installation. For the reasons that follow, we deny the protest.

The solicitation, for miscellaneous earthwork construction, was issued on June 18, 1982, and called for bid opening at 2:00 p.m., July 22. It contained the standard clauses regarding the conditions under which a late bid would be considered. It also stated that hand-carried bids should be left in the depository in Room G-12 of the Multnomah Building, 319 S.W. Pine Street, Portland, Oregon.

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When bids were opened as scheduled on July 22, E.W. Eldridge, Inc. was the apparent low bidder at \$244,300.00. Visar's bid of \$226,556.50 would have been low but for the fact it was not received in the contracting office until 8:50 on the morning of July 23. The contracting officer determined that under the circumstances the solicitation provisions that permit consideration of late bids would not apply to Visar's bid. Therefore, by letter of July 26, the Corps informed Visar that its bid would not be considered. Visar protested this determination to the Corps but prior to the agency's resolution of the matter, Visar filed a protest with this Office.

Visar sent its bid via Greyhound Bus Lines. It paid Greyhound a special fee to deliver the bid to the Corps' offices. The bid arrived at the Greyhound terminal in Portland early in the morning on July 22. Sometime between the hours of 9:00 and 10:00 a.m., a cartographic aide in the Corps' photogrammetry section was sent to the Greyhound terminal to pick up several packages that had arrived at the terminal destined for that section. At the same time, under circumstances more fully discussed below, she picked up Visar's bid and returned it along with the other packages to her supervisor in the photogrammetry section.

Visar contends that the Corps' employee volunteered to deliver its bid to the Corps' offices and that in doing so she assumed Greyhound's duty to deliver the bid in time for bid opening. It argues that she failed to do so, and this failure frustrated Greyhound's attempt to deliver the bid. Visar further contends that this failure amounts to improper Government action that justifies consideration of its bid.

The employee states in an affidavit that the Greyhound clerk asked her if she would deliver a package, without informing her that the plain, unmarked Greyhound envelope (which was later destroyed and is not available) she was given contained Visar's bid. The agency argues that Greyhound acted unreasonably in giving the bid to the employee rather than delivering the bid itself. Since the protester has offered no evidence refuting the Corps' version and, in fact, has elected not to comment at all on the Corps' report submitted to our Office in connection with this

protest, we will accept the agency's account. See Nielson, Maxwell & Wangsgard, B-205418, April 26, 1982, 82-1 CPD 381.

The Corps concedes that Visar's bid was delivered to the photogrammetry section in the Corps' office 4 hours before bid opening and was recognized by the supervisor of that section and misrouted by him within the internal mail system. The agency notes that neither the employee who delivered the bid nor her supervisor had any expertise in procurement matters or much contact with the Corps' contracting branch. The Corps states that the misrouting of the bid was not the paramount reason for its late receipt, but rather the paramount reason was Greyhound's failure to deliver the bid.

We disagree with Visar's contention that the Corps frustrated Greyhound's ability to deliver the bid and we agree with the agency that the paramount reason for the delay in receipt of Visar's bid was Greyhound's failure to deliver the bid.

Late bids delivered by commercial carriers are not to be considered under the late bid provision contained in Defense Acquisition Regulation § 7-2002.2 and the "Late Bid" clause in the solicitation, both of which allow consideration of a late bid sent by mail if lateness is due to Government mishandling after it has been received. See Scot, Incorporated, 57 Comp. Gen. 119 (1977), 77-2 CPD 425. A late hand-carried bid, or as in this case, a late bid delivered by a commercial carrier, may, however, be considered where lateness is due to improper action of the Government and where consideration of the late bid would not compromise the competitive procurement system. On the other hand, such a late bid should not be accepted if the bidder significantly contributed to the late receipt by not acting reasonably in fulfilling its responsibility of delivering the bid to the proper place by the proper time, even though lateness may be in part caused by erroneous Government action or advice. Empire Mechanical Contractors, Inc., B-202141, June 9, 1981, 81-1 CPD 471. For a late hand-carried bid to be considered, it must be shown that wrongful Government action was the sole or paramount cause of late receipt.

In cases where we have permitted late hand-carried bids to be considered, there was some affirmative action on the Government's part, such as improper or conflicting delivery instructions, that made it impossible for the hand-carried bid to be timely delivered to the bid opening location. See for example, Scot, Incorporated, supra; Empire Mechanical Contractors, Inc., supra.

Here, the carrier for its own convenience solicited the Corps' employee's services to deliver an unmarked package, even though it should have been aware that the package contained Visar's bid, and despite the fact that it had received a special fee to deliver the package to the contracting office. The employee's agreement to deliver the bid did not amount to affirmative action on the Government's part that frustrated Greyhound's ability to deliver the bid. This is especially so since the employee was not a representative of the contracting officer and she did all that could reasonably have been expected of her when she turned the unmarked package over to her supervisor.

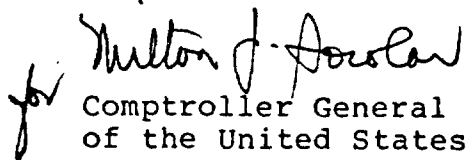
Regarding the misrouting of Visar's bid in the Corps' internal mailing system--the supervisor concededly mis-addressed the bid--we do not believe that this was the paramount cause for the late receipt of Visar's bid. Where a bidder (or as in this case its agent) significantly contributes to the late receipt of a bid by acting unreasonably in fulfilling its responsibilities, any subsequent mishandling by the Government is clearly not the paramount reason for the bid's late receipt. See Ferrotherm Company, B-203288, September 1, 1981, 81-2 CPD 194. In this connection, we note that there is some doubt that the bid would have been delivered to the contracting office in the normal course of events by the Corps' internal mailing system in time for bid opening even if it had been properly addressed by the Corps' employee after it arrived in the photogrammetry section.

In our view, Greyhound acted unreasonably in giving the unmarked package to a Corps' employee who had no official relationship with the contracting officer. This act initiated a series of events that culminated in the

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bid arriving late at the contracting office. Under the circumstances, the late arrival was not caused by improper Government action and the bid therefore was properly rejected.

The protest is denied.

  
Comptroller General  
of the United States